

REMARKS

By this Amendment, Applicants amend independent claims 1, 13, 15, and 28. Support for the amendments can be found in the specification at, for example, page 14, lines 3-13 and page 15, lines 15-24. Claims 1-13, 15, and 17-46 are pending in this application.

In the Office Action,¹ the Examiner rejected claims 1-13, 15, and 17-46 on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 2, 4-14, 16-27, and 29-38 of U.S. Patent No. 7,457,933; provisionally rejected claims 1-13, 15, and 17-46 on the ground of non-statutory obviousness-type double patenting as being unpatentable over claims 1-12 and 15-39 of copending U.S. Application No. 10/526,747; rejected claims 1, 13, 15, 28, and 34-38 under 35 U.S.C. § 112, second paragraph, as being indefinite; rejected claims 1, 3-13, 15, 18-28, and 30-46 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,835,953 to Ohran ("*Ohran*"); and rejected claims 2, 17, and 29 under 35 U.S.C. § 103(a) as being unpatentable over *Ohran* in view of U.S. Patent No. 6,269,382 to Cabrera et al. ("*Cabrera*").

I. Information Disclosure Statement

Applicants filed an Information Disclosure Statement (IDS) under 37 C.F.R. § 1.97(b) on December 24, 2008, without knowledge that the Office Action had been issued one day before on December 23, 2008. Applicants respectfully request that the

¹ The Office Action contains a number of statements reflecting characterizations of the related art and the claims. Regardless of whether any such statement is identified herein, Applicants decline to automatically subscribe to any statement or characterization in the Office Action.

Examiner consider the documents listed in the IDS and indicate that they were considered by making appropriate notations on the SB/08 form attached to the IDS. Applicants note that the last paragraph of the IDS included an authorization to charge any fee, including a fee of \$180.00 as specified by 37 C.F.R. § 1.97(e), due in connection with the filing of the IDS to Deposit Account 06-0916, if the fee has not already been charged.

II. Double Patenting Rejections

Applicants respectfully traverse the rejection of claims 1-13, 15, and 17-46 on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 2, 4-14, 16-27, and 29-38 of U.S. Patent No. 7,457,933. However, to expedite prosecution, Applicants file concurrently herewith the attached Terminal Disclaimer. Accordingly, Applicants respectfully request that the Examiner withdraw the double patenting rejection based on U.S. Patent No. 7,457,933.

Applicants respectfully traverse the provisional rejection of claims 1-13, 15, and 17-46 on the ground of nonstatutory obviousness-type double patenting as being unpatentable over copending U.S. Application No. 10/526,747, and request that the provisional rejection be held in abeyance. To the knowledge of the undersigned, U.S. Application No. 10/526,747 is currently pending, and, thus, no double patenting circumstance can arise until a patent is granted. Since a patent has not yet issued from U.S. Application No. 10/526,747, Applicants respectfully request that the provisional rejection be held in abeyance and any resolution in the form of a terminal disclaimer or otherwise be deferred. Applicants further request that the provisional rejection be

withdrawn should it be the only remaining rejection in this application and U.S.

Application No. 10/526,747 has not issued as a patent.

III. Rejection of Claims 1, 13, 15, 28, and 34-38 under 35 U.S.C. § 112, Second Paragraph

Applicants respectfully traverse the rejection of claims 1, 13, 15, 28, and 34-38 under 35 U.S.C. § 112, second paragraph, as being indefinite.

Regarding claims 1, 13, 15, and 28, the Examiner alleges that "it is unclear when and how the instruction ['deleting the ID from the second lock object after the ID has been stored in the first lock object'] will be executed because 'the ID from the first lock object' has been deleted in the previous step." Office Action at 4. In response, Applicants respectfully submit that the steps recited in claims 1, 13, and 15 are not necessarily recited in chronological order, and the scope of these claims are not limited to the listed order. Furthermore, claim 28 recites a system comprising various means, which are also not necessarily listed in any order. Nonetheless, to advance prosecution, Applicants amend claims 1, 13, 15, and 28 by rearranging the elements thereof, without changing the claim scope, to address the Examiner's concerns.

Regarding claims 13, 28, and 34-38, the Examiner alleges that "the limitation 'memory means for storing', 'input means for entering', 'storage means for storing' are a means (or step) plus function limitation" and that "the written description fails to disclose the corresponding structure, material, or acts for the claimed function." Office Action at 4. The Examiner's allegation is incorrect.

For example, at least page 18, lines 1-7; page 8, lines 30-35; and Fig. 1, storage 112 provide support for the "memory means" in claim 13 and "means for storing" in

claim 28. Furthermore, at least the keyboard labeled "input" in Fig. 1 provides support for the "input means" of claim 13. Therefore, the written disclosure provides sufficient support for the means plus function elements of claims 13, 28, and 34-38.

Accordingly, Applicants respectfully request that the Examiner withdraw the rejection of claims 1, 13, 15, 28, and 34-38 under 35 U.S.C. § 112, second paragraph.

IV. Rejection of Claims 1, 3-13, 15, 18-28, and 30-46 under 35 U.S.C. § 102(b)

Applicants respectfully traverse the rejection of claims 1, 3-13, 15, 18-28, and 30-46 under 35 U.S.C. § 102(b) as being anticipated by *Ohran*. In order to properly establish that *Ohran* anticipates Applicants' claims under 35 U.S.C. § 102, each and every element of each of the claims must be found, either expressly described or under principles of inherency, in that single reference. See M.P.E.P. § 2131 (8th ed., rev. 7, July 2008) (quoting *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628 631, 2 U.S.P.Q.2d 1051, 1053 (Fed. Cir. 1987)). Furthermore, "[t]he identical invention must be shown in as complete detail as is contained in the . . . claim." *Id.* (quoting *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 U.S.P.Q.2d 1913, 1920 (Fed. Cir. 1989)). Applicants submit that *Ohran* does not teach or suggest each and every element of Applicants' claims.

Independent claim 1, as amended, recites a method for moving data objects comprising, for example, "locking the data object in the first storage location by storing the ID in a first lock object."

The Examiner alleges that a backup map in *Ohran* corresponds to the claimed "first lock object." Office Action at 6. The Examiner's allegation is incorrect.

Ohran discloses, “[w]hen a snapshot is to be taken, . . . the next step is to copy the snapshot map into the backup map.” *Ohran*, col. 17, ll. 56-58. *Ohran* further discloses, “it may not be necessary to copy the snapshot map to the backup map. The snapshot map may simply be used as the backup map and a new map taken as the current snapshot map.” *Id.*, col. 18, ll. 4-7. Accordingly, in *Ohran*, the snapshot map and the backup map are interchangeable.

Furthermore, *Ohran* discloses that “[i]t is . . . preferred that the static snapshot be taken without terminating user read and write access to the mass storage device.” *Id.*, col. 11, ll. 17-20 (emphasis added). That is, the snapshot map and the backup map in *Ohran* do not lock users from having access to data. Therefore, the backup map in *Ohran* cannot constitute the “first lock object,” as recited in claim 1 (emphasis added).

Moreover, although *Ohran* discloses, “[a] simple way to prevent data from changing is to prevent all access to the file during the backup procedure,” col. 2, ll. 50-51, *Ohran* does not disclose preventing all access to the file “by storing the ID in a first lock object,” as recited in claim 1.

For at least the foregoing reasons, *Ohran* fails to teach or suggest “locking the data object by storing the ID in a first lock object,” as recited in claim 1. Thus, *Ohran* fails to anticipate claim 1.

Independent claims 13, 15, and 28, although different in scope from claim 1, are allowable for at least reasons similar to those provided with respect to claim 1. In addition, claims 3-12, 18-27, and 30-46 are allowable at least due to their dependence from one of allowable independent claims 1, 15, or 28. Accordingly, Applicants

respectfully request that the Examiner withdraw the rejection of claims 1, 3-13, 15, 18-28, and 30-46 under 35 U.S.C. § 102(b).

V. Rejection of Claims 2, 17, and 29 under 35 U.S.C. § 103(a)

Applicants respectfully traverse the rejection of claims 2, 17, and 29 under 35 U.S.C. § 103(a) as being unpatentable over *Ohran* in view of *Cabrera*. A *prima facie* case of obviousness has not been established.

"The key to supporting any rejection under 35 U.S.C. 103 is the clear articulation of the reason(s) why the claimed invention would have been obvious." M.P.E.P. § 2141(III). "[T]he framework for objective analysis for determining obviousness under 35 U.S.C. 103 is stated in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966). . . . The factual inquiries . . . are as follows:

(A) [Determining the scope and content of the prior art;]

(B) Ascertaining the differences between the claimed invention and the prior art;
and

(C) Resolving the level of ordinary skill in the pertinent art."

M.P.E.P. § 2141(II). "Office personnel must explain why the difference(s) between the prior art and the claimed invention would have been obvious to one of ordinary skill in the art." M.P.E.P. § 2141(III).

Claim 2 depends from claim 1. As discussed above, *Ohran* fails to teach or suggest "locking the data object in the first storage location by storing the ID in a first lock object," as recited in claim 1, and required by claim 2.

The Examiner alleges that "Cabrera discloses wherein the data object comprises one or more fields of one or more tables, and wherein the ID comprises one or more key fields of the one or more tables." Office Action at 11. Even assuming the Examiner's allegation is correct, which it is not, *Cabrera* fails to teach or suggest "locking the data object in the first storage location by storing the ID in a first lock object," as recited in claim 1, and required by claim 2. *Cabrera* thus fails to cure the deficiencies of *Ohran*.

For at least the foregoing reasons, the scope and content of the prior art have not been properly determined, and the differences between the prior art and claim 2 have not been properly ascertained. Accordingly, no reason has been clearly articulated as to why the prior art would have rendered claim 2 obvious to one of ordinary skill in the art. Therefore, a *prima facie* case of obviousness has not been established with respect to claim 2.

Claims 17 and 29, although different in scope from claim 2, are allowable for at least reasons similar to those provided with respect to claim 2. Accordingly, Applicants respectfully request that the Examiner withdraw the rejection of claims 2, 17, and 29 under 35 U.S.C. § 103(a).

CONCLUSION

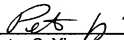
In view of the foregoing, Applicants respectfully request reconsideration of this application and timely allowance of the pending claims.

Please grant any extensions of time required to enter this response and charge any additional required fees to our deposit account 06-0916.

Respectfully submitted,

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Dated: March 11, 2009

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Attachment: Terminal Disclaimer